

This letter discusses the taxation of satellite TV equipment provided to customers who sign up for satellite TV service. See 86 Ill. Adm. Code 130.401. (This is a GIL).

February 21, 2003

Dear Xxxxx:

This letter is in response to your letter dated November 21, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

At the request of our client, (The Company) we respectfully request a taxability determination with regard to various transactions associated with the following facts. The Company is about to become an authorized sales agent for a satellite service (SS) and is concerned about its tax responsibilities in the State.

STATEMENT OF FACTS:

The Company will solicit customers to sign up for SS programming service with an annual programming commitment. The Company can provide two offers to potential customers:

- 1) The 'Single Room Offer' that gives the customer one SS receiver, one remote control, and one satellite dish antennae free of charge to the customer, and provide installation free of charge to the customer. Or,
- 2) The 'Two-Room Offer' that gives the customer two SS receivers, two remote controls, and one satellite dish antennae for a charge of \$49.00 and provide installation at no charge to the customer. This charge is made by The Company to the customer.

Upon acceptance and activation of the customer, the agreement states that The Company will receive from SS:

- 1) Reimbursement for the full cost of the receiving equipment for the 'Single Room Offer.'

- 2) Reimbursement for the full cost of the receiving equipment for the 'Two-Room Offer' less the \$49.00 charge.
- 3) Reimbursement of \$100 for each installation of a 'Single Room Offer' and an additional \$125 for each 'Two Room Offer' installed.

SS will bill the customer directly for the satellite television services. The Company will buy the satellite receiving equipment from an out of state, unrelated third party vendor and will make no use of the equipment other than retention for resale.

Taxability Questions:

- 1) Are there any tax consequences associated with the sale by the unrelated third party vendor to The Company since the equipment is resold (with the service in the 'Single Room Offer' and for \$49 in the 'Two-Room Offer')?
- 2) Is there any sales tax consequence associated with the reimbursement for the full cost of the receiving equipment from SS to The Company?
- 3) SS also reimburses the company for installation of the satellite receiving equipment. It is our belief that this reimbursement is not taxable. Is this correct?
- 4) Is there any potential tax consequences associated with the \$49 charge associated with the 'Two- Room Offer'?

I would like to thank you in advance for your prompt attention to this matter. If you have any questions, please contact me.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See the enclosed copy of 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See the enclosed copy of 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

The Illinois Retailers' Occupation Tax is measured by the seller's gross receipts from such sales made in the course of such business. Gross receipts" means the total selling price or the amount of such sales. See the enclosed copy of 86 Ill. Adm. Code Section 130.401. When Illinois retailers sell tangible personal property to customers for a particular dollar amount, they have made sales subject to Retailers' Occupation Tax liability. The retailers must pay Retailers' Occupation Tax to the Department based upon their gross receipts, or actual amount received, from the sales of the tangible personal property.

In regards to your specific questions and based upon the limited information in your letter, the provision of the equipment to the customer at the Company's direction would generally be considered a retail sale. The Company receives gross receipts from the sale of that equipment in the form of the reimbursement from SS and any additional amounts received directly from the customer (the \$49.00 customer charge in the second scenario for example). Those amounts received as reimbursements

for the cost of the receiving equipment would be subject to Retailers' Occupation Tax liability and any applicable local retailers' occupation taxes. The customer incurs owes the corresponding Use Tax and applicable local tax reimbursements. It is important that the Company keep records of the amount of gross receipts you receive for sales of the equipment. If the Company does not keep such records and is audited, an auditor will use his best information and judgment to determine the amount of gross receipts subject to tax.

The reimbursement for the installation from SS would not generally represent gross receipts from the sale of the equipment as long as those reimbursements are separately agreed to by SS as provided in the enclosed copy of 86 Ill. Adm. Code Section 130.450.

The Company can purchase the equipment without incurring tax by providing the third party vendor with a Certificate of Resale. See the enclosed copies of 86 Ill. Adm. Code Sections 130.1401 and 130.1405.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.